

# **Exhibit 1**

**CONFIDENTIAL**

157 ORIGINAL

**Time Charter****GOVERNMENT FORM**

Approved by the New York Produce Exchange

November 6th, 1913 - Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

This Charter Party, made and concluded in Hamburg this 3rd day of September, 1913

Between **SEASPAN CORPORATION of Unit 2-7th Floor, Bupa Centre, 141 Connaught Road West, Hong Kong, China,**Owners of the good Steamship/Motorship **SEASPAN HAMBURG** as per the vessel description set out in **Clause 29** and with hull, machinery and equipment in a thoroughly efficient state and classed at of about cubic feet bale capacity deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding one and one-half percent of ship's deadweight capacity, allowing a minimum of fifty tons) on a draft of

feet meters inches on summer freeboard, inclusive of permanent bunkers,

which are of the capacity of about tons of fuel, and capable of steaming, fully laden, under good weather conditions about

knots on a consumption of about tons of best Welsh coal best grade fuel oil best grade Diesel oil,

and **HAPAG-LLOYD AG, Charterers of the City of Hamburg, Germany.**Witnesseth, that the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for a Time Charter period of **Minimum 22 months - maximum 30 months, exact period in Charterers option.**

**Subject to Owners prior approval which not to be unreasonably withheld,** Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party. Acceptance of delivery by Charterers shall not constitute any waiver of Owner's obligation hereunder. Vessel to be placed at the disposal of the Charterers at **on arrival first sea pilot station Cagliari, Italy 3rd November 2013, 18:00 hrs - 23:59 hrs LT atdnshinc, Owners tendering 30/20/10/7/4/1 days' notice of vessels delivery to Charterers.** in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 5. Vessel on her delivery and throughout the duration of the Charter to be ready to receive containerized cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the container cargo service, having water ballast, winches and donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed in carrying lawful merchandise in ISO containers, and/or ISO Flatracks and/or ISO Tanktainers excluding cargo set out in

**Clause 44.**

(vessel is not to be employed in the carriage of Live Stock, but Charterers are to have the privilege of shipping a small number at their risk, all necessary fittings and other requirements to be for account of Charterers), in such lawful trades, between safe port and/or ports and / or safe anchorages and / or open roads subject to Masters' approval which not to be unreasonably withheld in British North America, and/or United States of America, and/or West Indies, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico, and/or Mexico, and/or South America and/or Europe and/or Africa, and/or Asia, and/or Australia, and/or Tasmania, and/or New Zealand, but excluding Magdalena River, River St. Lawrence between October 31st and May 15th, Hudson Bay and all unsafe ports, also excluding, when out of season, White Sea, Black Sea and the Baltic, (Trading Exclusions as per Clause 76) as the Charterers or their Agents shall direct, on the following conditions:

1. That whilst on hire the Owners shall provide and pay for all provisions, wages, immigration, and consular shipping and discharging fees of the Crew, also all consular fees pertaining to vessels' nationality or flag, and all garbage removal unless compulsory, in which case same to be for Charterers' account, shall pay for the insurance of the vessel, also for all the cabin, deck, engine room and other necessary stores, including boiler water and fresh water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery, and equipment with all certificates necessary to comply with current requirements of ports of call for and during the service.

2. That whilst on hire, the Charterers shall provide and pay for all fuel and MDO except lubricating oil, Port Charges, customary Pilotages, Canal dues, River Dues, Stevedoring, Tally Men, Bontago, Towage, Customary watchmen, (see also Clause 84) Agencies, Commissions, taxes on cargo or freight Consular Charges (except those pertaining to the Crew and Vessel and or necessitated because of vessel's nationality or flag), and all other usual expenses except those before stated, but when the vessel

puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew, to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers' account. All other fumigations to be for Charterers' account after vessel has been on charter for a continuous period of three months or more. Owners to provide and keep on board a valid deratization or equivalent certificate throughout the Charter party period. See Clause 34

~~Charterers to have the privilege of using shifting boards for dunnage, they making good any damage thereto.~~

3. That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than ..... tons and not more than ..... tons and to be re-delivered with not less than ..... tons and not more than ..... tons

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of [REDACTED] per day or pro rata, including overtime, net of address commission, (and [REDACTED] for vessel positional expenses,) all rates in United States Currency per ton on vessel's total deadweight carrying capacity, including bunkers and stores, on summer freeboard, per Calendar Month; commencing on and from the day of her delivery, as aforesaid, and at the same rate for any part of a day month; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) on dropping last outward sea pilot, One Safe Port in charterers option, Singapore / South Japan Range including, Taiwan, full PRC, including Port Kelang, or in Charterers option on dropping last outward sea pilot, 1 safe port Hamburg / Le Havre range, or, in Charterers option on dropping last outward sea pilot 1 safe port full Mediterranean range, port in Charterers option, anytime day or night, Sundays and holidays included unless otherwise mutually agreed. Charterers are to give Owners 30/20/10 day's approximate and 7/4/1 definite notice of vessel's re-delivery and probable port. Tendering redelivery notice will render option null and void. *No redelivery between 1st December – 1st February during this Charter.*

5. Hire to be paid with first hire from date of delivery, until the 1<sup>st</sup> / 00:00 hours of the following month, whilst hire thereafter to be payable on a monthly basis with remittance value date to be the 20<sup>th</sup> of a month. Payment of said hire to be made in Hamburg as per Clause 77 in cash in United States Currency, see Clause 32, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. Time to count from 7 a.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they to have the privilege of using vessel at once, such time used to count as hire.

Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 2½% commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide except at such places where it is customary for similar size vessels to safely lie aground.

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow. Charterers paying Owners ..... US\$ ..... per day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense.

8. That the Captain shall prosecute his voyages with the utmost despatch, *with due regard to the slow steaming clause if so instructed by Charterers'* and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, trim, lash, secure, unlash, unsecure, tally, and discharge, the cargo at their expense under the supervision and responsibility of the Master, (as far as vessel seaworthiness is concerned, but without prejudice to Charterers responsibility to properly load, stow, lash etc.) who is to sign Bills of Lading for cargo as presented, in conformity with Mate's and or Tally Clerk's receipts. See Clause 52 and Clause 70.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted with the utmost despatch with

83 *due regard to the slow steaming clause if so instructed by Charterers'*. He is to be furnished with free and suitable accommodation, and same fare as provided for  
84 Captain's table, Charterers paying at the rate of ~~US\$~~ per day. Owners to victual Pilots and Customs Officers, and when authorized by Charterers or their Agents to victual  
85 Tally Clerks, Stevedores Foreman, etc., Charterers paying at the current rate per meal, for all such victualling. See Clause 101

86 11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, *in writing*, and the Captain shall  
87 keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when  
88 required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

89 ~~12. That the Captain shall use diligence in caring for the ventilation of the cargo holds as instructed by the Charterers.~~

90 13. That the Charterers shall have the option of continuing this charter for a *further period of minimum 8 / maximum 12 months, +/- 15 days more or less in*  
91 *Charterers option, which to be nominated latest September 3rd, 2015. Hire rate for the optional period USD 15500 per day or pro rata, including overtime.*  
92 ~~on giving written notice thereof to the Owners or their Agents, days previous to the expiration of the first named term, or any declared option.~~

93 14. That if required by Charterers, time not to commence before ~~and should vessel~~  
94 ~~not have given written notice of readiness on or before~~

95 ~~but not later than 4 p.m. Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.~~

96 15. That in the event of the loss of time from deficiency and/or default and / or strike of officers and crew or men or deficiency of stores, fire, breakdown or damages  
97 to hull, machinery or equipment grounding, detention by average accidents to ship or cargo, dry-docking for the purpose of examination or painting bottom, or by any other  
98 cause preventing the full working of the vessel *unless this has been caused by Charterers and / or Charterers' servants*, the payment of hire shall cease for the time  
99 thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, *unless this has been caused by*  
100 *Charterers, and / or Charterers' servants*, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all direct unavoidable extra expenses shall  
101 be deducted from the hire. See also Clauses 35 / 40 / 41 / 52 / 54 / and 70

102 16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the  
103 Charterers *within 3 banking days*. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, machinery,  
104 Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted. The vessel shall have the liberty to sail with or without pilots,  
105 to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

106 17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed  
107 by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for  
108 the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men. See Clause 68

109 18. That the Owners shall have a lien upon all cargoes, and all sub-freights *and sub hires* for any amounts due under this Charter, including General Average  
110 contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.  
111 Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the  
112 owners in the vessel. See Clause 65

113 19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion.  
114 *General Average shall be adjusted, stated and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of York-Antwerp Rules 1994, in London, in*  
115 *the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such*  
116 *adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo*  
117 *claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship.*  
118 *Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or*  
119 *his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the*  
120 *goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money and be*  
121 *remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the*  
122 *General Average and refunds or credit balances, if any, shall be paid in*  
123 *United States money.*

124 In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence  
125 or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, the shipper and the consignee, jointly and



severally, shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers. **Hire not to contribute to General Average.** On a without prejudice basis, Owners agree to discuss with Charterers possible commercial solution prior to declaring a General Average. Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. That as the vessel may be from time to time employed in tropical waters during the term of this Charter, Vessel is to be decked at a convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.

**No Dry docking unless in case of emergency.**

22. Owners shall maintain the gear of the ship as fitted, providing gear (for all derricks) capable of handling lifts up to three tons, also providing ropes, falls, slings and blocks. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for same as on board, otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel sufficient lights as fitted onboard for night works, in holds and to maintain same in efficient working order and vessel to give use of electric light when so fitted, but any additional lights over those on board to be at Charterers' expense.

The Charterers to have the use of any gear on board.

23. Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch to work winches day and night, as required, Charterers agreeing to pay officers, engineers, winchmen, deck hands and donkeymen for overtime work done in accordance with the working hours and rates stated in the ship's articles. If the rules of the port, or labor unions, prevent crew from driving winches, shore winchmen to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

**See Clause 33**

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels etc."

in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder:

#### **U.S.A. Clauses Paramount**

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

#### **Both-to-Blame Collision Clause**

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

**See Clause 36/37 and Rider Clauses**

25. The vessel shall not be required to enter any ice bound port or area, or any port or area where lights or light ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or area, or to get out after having completed loading or discharging.

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew as well as physical control and operations of the vessel at all times, acts of pilot and tugboats and linesmen, except in case of strike and / or lockout and / or

other circumstances beyond Owner's control, and all other matters, same as when trading for their own account.

27. A commission of 2½ per cent is payable by the Vessel and Owners to on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

28. No address commission of 2½ per cent payable to on the hire earned and paid under this Charter

*Clause 29 to 102 and additional Clauses as attached hereto and deemed to form part of this Charter Party*

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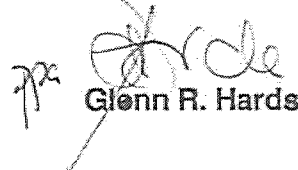
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*For the Owners*



Gerry Wang  
Chief Executive Officer

*For the Charterers*



Glenn R. Hards



Tim Petersen

## **Exhibit 2**

CONFIDENTIAL

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Charter Party drawn up with two originals

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913 - Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

1 This Charter Party, made and concluded in .....Hamburg.....25<sup>th</sup> day of July..... 19 2013  
2 Between Kommanditgesellschaft MS "Santa Roberta" Offen Reederei GmbH & Co., Hamburg, Germany.....  
3 as Owners of the good ..Liberian Flag..... Steamship/Motorship "Santa Roberta" - for description see Clause 62..... of.....  
4 of ..... tons gross register, and ..... tons net register, having engines of ..... indicated horse power  
5 and with hull, machinery and equipment in a thoroughly efficient state, and classed .....  
6 at ..... of about ..... cubic feet bale capacity, and about ..... tons of 2240 lbs.  
7 deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding one and one half percent of ship's deadweight capacity,  
8 allowing a minimum of fifty tons) on a draft of ..... feet ..... inches on ..... Summer freeboard, inclusive of permanent bunkers,  
9 which are of the capacity of about ..... tons of fuel, and capable of steaming, fully laden, under good weather  
10 conditions about ..... knots on a consumption of about ..... tons of best Welsh coal best grade fuel oil best grade Diesel oil,  
11 now.....trading.....  
12 ..... and ...Hapag-Lloyd Aktiengesellschaft..... as Charterers of the City of ....Hamburg, Germany.....  
13       Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for  
14 about a timecharter period of minimum 22 / maximum 26 months - exact period in Charterers' option .....  
15 ..... within below mentioned trading limits.  
16 Subject to Charterers' pre-advice to the Owners, Charterers to have the liberty to sublet the vessel for all or any part of the time covered by this  
Charter, vessel not to be subletted to any party which have a blacklisting or sanction by other countries as consequence, but Charterers remaining  
responsible for  
17 the fulfillment of this Charter Party.  
18 Vessel to be placed at the disposal of the Charterers, at on arrival first sea pilot station Genoa any time, day or night, Saturdays, Sundays and  
19 holidays included.....  
20 in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as  
21 the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 5. Vessel on her delivery to be  
22 ready to receive container cargo with clean swept holds to Charterers' satisfaction (in case of discrepancies mutual agreed independent official  
surveyor's report to be final for both parties) and tight, staunch, strong and in every way fitted and fit for the ISO-containers (including ISO-  
flatracks/platforms) service, having water ballast, winches and  
23 donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same  
24 time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchan-  
25 dise in ISO standard containers (including ISO-flatracks/platforms), including dangerous goods in accordance with IMDG-Code as amended  
and vessel's Certificate of Compliance for the Carriage of Dangerous Goods - see also Clause 63 - petroleum or its products, in proper containers,  
excluding .....  
26 (vessel is not to be employed in the carriage of Live Stock), but Charterers are to have the privilege of shipping a small number on deck at their risk,



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~~all necessary fittings and other requirements to be for account of Charterers), in such lawful trades, between safe port and/or ports in British North America, and/or United States of America, and/or West Indies, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico, and/or Mexico, and/or South America ..... and/or Europe, and/or Africa, and/or Asia, and/or Australia, and/or Tasmania, and/or New Zealand, but excluding Magdalena River, River St. Lawrence between October 31st and May 15th, Hudson bay and all unsafe ports; also excluding, when out of season, White Sea, Black Sea and the Baltic;~~  
~~trading exclusions see Clause 67.....~~

as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water, **non-compulsory garbage removal (not resulting from cargo carried), gangway hire, unless compulsory, in which case for Charterers' account** and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That **whilst on hire** the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, **customary and compulsory** Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. ~~All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.~~

Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but Owners to allow them the use of any dunnage and shifting boards already aboard vessel. Charterers to have the privilege of using shifting boards for dunnage, they making good any damage thereto.

3. ~~See Clause 61 That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than ..... tons and not more than ..... tons and to be re-delivered with not less than ..... tons and not more than ..... tons.~~

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of ~~.....~~ **per day/pro rata including overtime.....** ~~..... United States Currency per ton on vessel's total deadweight carrying capacity, including bunkers and stores, on ..... summer freeboard, per Calendar Month, commencing on and from the day time of her delivery, as aforesaid, and at and after the same rate for any part of a month day hire computation to be based on UTC; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at upon dropping last outward sea pilot one safe port Hamburg/Passero range or Singapore/South Japan range, including Port Kelang, full People's Republic of China, Taiwan, Thailand, Vietnam, Indonesia (not east of Jakarta), Malaysia mainland, Philippines and South Korea - always in Charterers' option, any time, day or night, Saturdays, Sundays and holidays included..... unless otherwise mutually agreed. Charterers are to give Owners not less than 30/20/10 days approximate notice of vessels and 7/4/1 day(s) definite notice of expected date of re-delivery, and probable port.~~

5. Payment of said hire to be made (see Clause 77) ~~in New York in cash in United States Currency, semi-monthly on the 20<sup>th</sup> of each calendar month in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the~~

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hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel or to withhold the vessel or any part of vessel's performance, when Owners not to be responsible for any claims, delays, consequences, extra expenses resulting therefrom from the service of the Char-

terers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. ~~Time to count from 7 a.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they to have the privilege of using vessel at once, such time used to count as hire.~~

Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 2 ½ % commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.

6. That the cargo or cargoes be laden and/or discharged in any safe dock or at any safe wharf or place including double banking – see also Clause 78 - that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely lie aground (however, see Clause 94).

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. **Supercargo to be carried only under his and/or Charterers' sole responsibility. Charterers have the privilege of passengers as far as accommodations allow, Charterers paying Owners ..... per day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense. See Clause 84.**

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, and trim, discharge and lash/unlash the cargo at their expense under the supervision of the Captain, who, if requested by Charterers and/or their agents, is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint ~~a Supercargo~~ **one or two Supercargoes**, who shall accompany the vessel **subject to sufficient space for 2<sup>nd</sup> Supercargo and Supercargo(es) to be carried under their Charterers' sole responsibility** and see that voyages are prosecuted

with the utmost despatch. ~~They are~~ **He is** to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the rate of **\$1.00 USD 10.00 per Supercargo per day.** ~~Owners to victual Pilots and Customs Officers, and also, when authorized by Charterers or their Agents, to victual Tally~~

~~Clerks, Stevedore's Foreman, etc., Charterers paying at the current rate per meal, for all such victualling.~~ **All representation and all communication expenses to be compensated by Charterers at US\$ 1,000.00 per month/pro rata for c/v/e together with hire due.**

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, **deck and engine, both in English**, showing the course of the vessel and speed/distance run and the consumption of fuel.

12. ~~That the Captain shall use diligence in caring for the ventilation of the cargo.~~

FIRST ORIGINAL

13. That the Charterers shall have the option of continuing this charter for a further period of .....  
 on giving written notice thereof to the Owners or their Agents ..... days previous to the expiration of the first named term, or any declared option.

14. That if required by Charterers, time not to commence before....15<sup>th</sup> August 2013 - 00:01 hours local time.....and should vessel  
 not have given written notice of readiness been delivered on or before 15<sup>th</sup> August 2013 - 23:59 hours local time but not later than 4 p.m.  
 Charterers or

their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.

15. That in the event of the loss of time from pursuant to deficiency and/or default of men or stores, fire, breakdown or damages to hull,  
 machinery or equipment,

grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause  
 preventing the full working of the vessel, the payment of hire shall cease for the actual time thereby lost; and if upon the voyage the speed be reduced  
 by

defect in or breakdown of any part of her hull, machinery or equipment, the actual time so lost, and the cost of any extra fuel consumed in consequence  
 thereof, and all direct resulting extra expenses shall be deducted from the hire. In case of vessel's crane breakdown, vessel to be partial off-hire for  
 the number of cranes affected, unless the broken down crane is the only crane required by Charterers for discharging/loading operation (in  
 which case the vessel is fully off-hire).

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be  
 returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas,  
 Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the  
 purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to GMAA at Hamburg.  
 Procedure according to GMAA rules. The Arbitrators shall be familiar with shipping practice. This Charter Party to be governed by and  
 construed in accordance with English law. three persons at New York;

one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for  
 the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights and sub-hires (as far as belonging to Time-  
 Charterers) for any amounts due under this Charter, including General Aver-

age contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess  
 deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which  
 might have priority over the title and interest of the owners in the vessel.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and  
 Crew's proportion. General Average shall be adjusted, stated and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of  
 York Antwerp Rules 1924, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these  
 Rules, according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into  
 United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at  
 the rate prevailing on the last day of discharge at the port or place of final discharge of such damage cargo from the ship. Average agreement or  
 bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier  
 or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if  
 required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall at the option of the  
 carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the

FIRST ORIGINAL

place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, the shipper and the consignee, jointly and severally, shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. That as the vessel may be from time to time employed in tropical waters during the term of this Charter, Vessel is to be docked at a convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.

Vessel not to drydock during currency of this Charter Party, except in case of emergency (next drydock is due in August 2017) .....

22. Owners shall maintain the gear of the ship as fitted, provided gear (for all cranes derrieks) capable of handling lifts as per vessel's description up to three tons, also

providing ropes, falls, slings and blocks. If vessel is fitted with derrieks capable of handling heavier lifts, Owners are to provide necessary gear for same, otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel and in holds lanterns and oil for

night work, and vessel to give use sufficient of electric light as on board when so fitted, but any additional lights over those on board to be at Charterers' expense. The

Charterers to have the use of any gear on board the vessel.

23. Vessel to work night and day, if required by Charterers. , and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch to work winches day and night, as required. Charterers agreeing to pay officers, engineers, winchmen, deck hands and donkeymen for overtime work done in accordance with the working hours and rates stated in the ship's articles. If the rules of the port, or labour unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby. Compulsory watchmen and watchmen for cargo to be for Charterers' account, all other watchmen for account of the party ordering same.

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc.," in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder:

#### U.S.A. Clause Paramount

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

#### Both to Blame Collision Clause

K9



FIRST ORIGINAL

~~If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.~~

25. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging.

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

27. A commission of 2 1/2 per cent is payable by the Vessel and Owners to Carl Bock & Co., Hamburg

on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

28. An address commission of 2 1/2 per cent payable to ..... on the hire earned and paid under this Charter.

Clauses 29 to 95 and Appendix as attached hereto are deemed to be fully incorporated in this Charter Party.

THE OWNERS

For and on behalf of Owners.

as per authority

CARL BOCK & CO.  
(GMBH & CO.) KG

(as brokers only)

THE CHARTERERS

 **Hapag-Lloyd**  
Hapag-Lloyd AG  
Chartering

per   
gez. G. R. Hards

  
Tim Petersen



# **Exhibit 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

-against- Case No.  
14-cv-9949 (VEC)

U.S. OIL TRADING LLC, O.W. BUNKER  
GERMANY GMBH, O.W. BUNKER & TRADING  
A/S, ING BANK N.V., CREDIT AGRICOLE  
S.A.,

Defendants.

-----x

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
HAPAG-LLOYD AKTIENGESELLSCHAFT,

Plaintiff,

-against- Case No.  
14-cv-10027 (VEC)

O'ROURKE MARINE SERVICES, L.P.,  
L.L.P., O.W. BUNKER GERMANY GMBH,  
O.W. BUNKER USA, INC., ING BANK N.V.,

Defendants.

-----x

January 19, 2016  
10:05 a.m.

DEPOSITION of RULE 30(b)(6) WITNESS

NORBERT KOCK

1 Norbert Kock (1-19-16)

2 or worldwide?

3 A. I think worldwide about 12,000.

4 I'm not sure. We have a lot of seafarers, we  
5 have a lot of land-based people, we have a lot  
6 of offices around worldwide.

7 Q. So worldwide, ballpark, about  
8 12,000 people?

9 A. I would assume that, yes.

10 Q. And in Hamburg, about how many  
11 people in the headquarters?

12 A. In Hamburg, I think about a  
13 thousand. This is also an estimation, I don't  
14 have the actual figures.

15 Q. Do you understand that the cases  
16 that you're appearing here in connection as  
17 Hapag-Lloyd's corporate representative today  
18 involve certain bunker purchasing transactions  
19 with vessels that involved Hapag-Lloyd,  
20 including the SANTA ROBERTA, the SEASPAN  
21 HAMBURG, the VIENNA EXPRESS, the SOFIA EXPRESS,  
22 the DERBY D and SIDNEY EXPRESS?

23 A. Yes.

24 Q. Did Hapag-Lloyd own or charter  
25 those vessels?

1 Norbert Kock (1-19-16)

2 A. The VIENNA EXPRESS is an owned  
3 vessel.

4 Q. We'll take them one by one as we go  
5 through. In connection with those vessels that  
6 I just mentioned, did Hapag enter into a  
7 contract with anyone whereby they purchased fuel  
8 for those vessels?

9 MR. FERNANDEZ: Objection to the  
10 form.

11 A. The purchasing is done by  
12 Hapag-Lloyd's purchasing department. We are not  
13 entitling any other party to do the purchasing  
14 for us, we are the responsible purchasers.

15 Q. Understood. So in connection with  
16 those vessels that I mentioned, those six  
17 vessels, who did Hapag-Lloyd's bunker purchasing  
18 department purchase the fuel from?

19 A. We purchased the fuel from O.W.  
20 Bunker in Germany.

21 Q. O.W. Bunker Germany, GMBH?

22 A. Yes.

23 Q. Did you enter into any agreements  
24 with O.W. Bunker Germany about the price of fuel  
25 that you would purchase from them?

1 Norbert Kock (1-19-16)

2 Q. And it's for the supply of fuel to  
3 the SANTA ROBERTA?

4 A. The supplier has been mentioned as  
5 U.S. Oil. U.S. Oil has been mentioned as their  
6 physical supplier.

7 Q. Did Hapag-Lloyd have any control  
8 over the selection of the physical supplier?

9 A. No.

10 Q. Did Hapag-Lloyd direct O.W. Germany  
11 to use U.S. Oil for the supply of fuel in  
12 Tacoma?

13 A. No.

14 Q. What is Norton Lilly?

15 A. Norton Lilly is the local agency of  
16 Hapag-Lloyd in this area.

17 Q. Can you explain what a port agent  
18 is?

19 A. The agent is responsible to  
20 coordinate also bunker supplies or lubricant  
21 supplies between the local vendors and the  
22 vessel; and in case of fuel oil supplies also  
23 the engaged quality control, which is normally a  
24 bunker surveyor engaged by us.

25 Q. Was there a bunker surveyor engaged



1 Norbert Kock (1-19-16)

2 in connection with this supply?

3 A. Yes.

4 Q. Who was that, if you recall?

5 A. Oiltest.

6 Q. Does a port agent such as Norton  
7 Lilly, or a bunker surveyor such as Oiltest, do  
8 they have any responsibility for purchasing  
9 fuel?

10 A. No.

11 Q. They are not authorized by  
12 Hapag-Lloyd to purchase fuel?

13 A. No.

14 Q. It's fair to say that they're  
15 involved in the logistics of coordinating the  
16 delivery after the order is placed?

17 A. Yes.

18 Q. Under remarks there's a designation  
19 that says "HALO GTC2007 shall apply." What does  
20 that mean?

21 A. They are referring to an earlier  
22 accepted set of terms and conditions of  
23 Hapag-Lloyd, which has been created in 2006, but  
24 the business condition between O.W. Bunker  
25 Germany and Hapag-Lloyd were begun or started in

1 Norbert Kock (1-19-16)

2 system.

3 Q. So Mr. Gaus has to fill in the  
4 information next to reference number, account,  
5 seller in the middle of the page here on page  
6 151?

7 A. Yes.

8 Q. The information about the local  
9 physical supplier that would be used by O.W.  
10 Germany, is that information that Mr. Gaus would  
11 have received from Mr. Selmer?

12 A. Yes, and it's needed for logistical  
13 reasons.

14 Q. Would this purchase order be  
15 generated before or after the order was agreed?

16 A. The order agreement has taken place  
17 during a telephone call, this is the normal way  
18 we are purchasing; and then the written order  
19 would be processed later on, it could be the  
20 same day or it could be the next day depending  
21 on what time the order is placed.

22 Q. On page 152 there are additional  
23 provisions as to quality and quantity of the  
24 fuel relating to a survey and sampling of the  
25 fuel, do you see that?

1 Norbert Kock (1-19-16)

2 A. Um-hum.

3 Q. Those are obligations that O.W.  
4 Germany took on?

5 A. This is a standard requirement of  
6 Hapag-Lloyd. These procedures are standard  
7 procedures from Hapag-Lloyd. Any vendor  
8 supplier has to follow, or seller has to follow  
9 these procedures.

10 Q. Do you know if Hapag-Lloyd made any  
11 payment on the supply to O.W. to the SANTA  
12 ROBERTA?

13 A. Yes.

14 Q. What's your understanding?

15 A. We make payment to the seller.

16 MR. MALONEY: Let me show you what  
17 I will have marked as Exhibit 12.

18 (Kock Exhibit 12, Document Bates  
19 stamped HPL-USOT 80, marked for identification.)

20 Q. This is a document Bates labeled  
21 HPL-USOT 80. Have you seen this document  
22 before?

23 A. Yes.

24 Q. What is this document?

25 A. This is the sales invoice of O.W.

1 Norbert Kock (1-19-16)

2 Q. How did Hapag-Lloyd come into  
3 possession of this document?

4 A. This has been shown to me during  
5 the preparation of this event.

6 Q. Was that the first time you saw a  
7 copy of this document?

8 A. Yeah.

9 Q. Did U.S. Oil Trading have an  
10 account with Hapag-Lloyd?

11 A. No.

12 Q. And this is not an invoice that was  
13 sent to Hapag-Lloyd?

14 A. No.

15 (Kock Exhibit 14, Document Bates  
16 stamped HPL-USOT pages 170 and HPL-USOT 171,  
17 marked for identification.)

18 Q. We have marked as Exhibit 14 a  
19 document Bates labeled HPL-USOT pages 170 to  
20 173. Have you seen this email and its  
21 attachments before?

22 A. This is the confirmation of the  
23 SANTA ROBERTA advising us about the received  
24 fuel oil.

25 Q. And on page 172 what does this

1 Norbert Kock (1-19-16)

2 there was a dispute here in this respect.

3 Q. Now turning to Exhibit 15 which is  
4 Bates labeled HPL-USOT 172 to 173. It appears  
5 there are seven separate fuel transactions with  
6 different vessels, is that correct?

7 A. Yes.

8 Q. One of those vessels is the SANTA  
9 ROBERTA?

10 A. Yes.

11 Q. This document reflects payment made  
12 to O.W. Germany on the SANTA ROBERTA and other  
13 transactions?

14 A. Yes.

15 Q. Would you mind translating for the  
16 record what the German text reads after "ladies  
17 and gentlemen"?

18 A. This is separate -- there is a  
19 separate payment of the below mentioned items.  
20 We did --

21 THE INTERPRETER: On advisement of  
22 the correctness.

23 A. Of the supplies.

24 THE INTERPRETER: Of the supplies  
25 or.



1 Norbert Kock (1-19-16)

2 A. Right.

3 Q. There are again some stamps on the  
4 invoice. Was this booked by Hapag-Lloyd's  
5 accounting department in October 28th of 2014?

6 A. Yes. You like the name. It has  
7 been booked by the accounting manager,  
8 Mrs. Yaylaoglu. I think she's coming from  
9 Turkey.

10 Q. Do you know whether this invoice  
11 was paid by Hapag-Lloyd to O.W. Germany?

12 A. Yes.

13 Q. Yes, it was paid?

14 A. No. Wait. Due date November 15th.  
15 I strongly believe we have stopped it.

16 Q. Ordinarily the terms of payment are  
17 within 30 days from the date of delivery listed  
18 there on the invoice?

19 A. Right, providing the invoice is  
20 coming within 14 days or 15 days after supply.  
21 If not, we are paying 15 days after receipt of  
22 the invoice.

23 MR. MALONEY: I think it's a good  
24 time for a lunch break.

25 (Lunch recess taken at 12:54 p.m.)

1 Norbert Kock (1-19-16)

2 MR. MALONEY: We're back from  
3 lunch.

4 Q. I'm going to hand you a document  
5 marked as Kock Exhibit 24, document Bates  
6 labeled HPL-USOT 00115.

7 Is this email and attachment from  
8 the SOFIA EXPRESS?

9 A. Yes.

10 Q. What does this document refer to?

11 A. It's a bunker requisition for the  
12 Port of Tacoma on the 29th of October, coming  
13 from the vessel's master.

14 Q. Do you know, was the SOFIA EXPRESS  
15 owned by Hapag-Lloyd?

16 A. This is a Hapag-Lloyd vessel.

17 Q. Was Hapag also operating that  
18 vessel?

19 A. Yes.

20 Q. In October of 2014?

21 A. Yes.

22 Q. This email went to the bunker  
23 purchasing department?

24 A. Yes. To the requirement section,  
25 3.

1 Norbert Kock (1-19-16)

2 Q. It's dated November 1st of 2014?

3 A. Yes.

4 Q. This copy is a little bit hard to  
5 read. Underneath the line items for quantity  
6 supplied and quality there's a notation that  
7 it's a "non-taxable delivery abroad."

8 Do you have an understanding of  
9 what that means?

10 A. No.

11 Q. I can't read the handwriting on the  
12 right. Do you have any understanding of what  
13 that notation refers to?

14 A. It looks like that a claim has been  
15 issued on this supplier and the payment, the  
16 normal payment run has been stopped due to this  
17 claim.

18 Q. Are you referring to a claim with  
19 respect to the quantity or quality of fuel  
20 delivered, or something else?

21 A. In this specific case I can't  
22 remember.

23 Q. It's your understanding that this  
24 invoice has not been paid, correct?

25 A. Yes.

1 Norbert Kock (1-19-16)

2 or liters or cubic meters, and if the product  
3 density is analyzed lighter than the given  
4 density on the bunker delivery receipt, you will  
5 calculate a loss to the shipowner because this  
6 is a pure commercial claim.

7 Q. Would the bunker purchasing  
8 department ever send a claim like this to the  
9 local physical supplier?

10 A. No. We have no relation to this  
11 physical supplier, we have no contract with  
12 them.

13 Q. The information on page 127 details  
14 the claim that Ms. Niemeyer made?

15 A. Yes. This is the fuel survey  
16 report we received from the attending surveyor  
17 who was at the scene witnessing the quantity  
18 determination onboard of the bunker barge, and  
19 witnessing also the sample drawing, and then  
20 arranging later on the analysis here.

21 Q. Does the review of that email  
22 refresh your recollection as to whether that  
23 refers to the claim that's indicated on the  
24 invoice?

25 A. It looks like, yes.

1 Norbert Kock (1-19-16)

2 Tacoma on October 18, 2014. The original  
3 documents will follow by courier."

4 Q. The attachment to this email on  
5 page 200, is that the invoice from O.W. Germany  
6 to Hapag-Lloyd?

7 A. Yes.

8 Q. Again, it was booked on October 29,  
9 2014 by Hapag-Lloyd's accounting department?

10 A. Yes.

11 Q. This invoice also was not paid?

12 A. Not paid, the security was issued.

13 (Kock Exhibit 32, Document Bates  
14 stamped HPL-USOT 197 to HPL-USOT 198, marked for  
15 identification.)

16 Q. We have marked as Exhibit 32 a  
17 document Bates labeled HPL-USOT 197 to 198.  
18 Have you seen this document before, sir?

19 A. Yes.

20 Q. What is this document?

21 A. This is an email to our requirement  
22 section 3, as well as to our ship management  
23 department, confirming the bunker delivery at  
24 Tacoma on 18/10/2014.

25 MR. MALONEY: Let's go off the

1 Norbert Kock (1-19-16)

2 Q. To not --

3 A. We are not interested to allow them  
4 to know who is competing to maybe contact each  
5 other to manipulate prices.

6 Q. There's no reference to any local  
7 physical suppliers on page 42 and 43, is there?

8 A. No.

9 Q. Do you know if this inquiry was  
10 sent directly to O'Rourke Marine Services?

11 A. This inquiry has not been sent to  
12 O'Rourke.

13 Q. Did Hapag-Lloyd have any  
14 relationship with O'Rourke Marine Services  
15 directly?

16 A. No, no relationship directly. We  
17 only have relationship to sellers accepting our  
18 terms and conditions of purchasing.

19 Q. O.W. Germany accepted Hapag-Lloyd's  
20 terms and conditions?

21 A. Yes.

22 Q. Did U.S. Oil Trading accept  
23 Hapag-Lloyd's terms and conditions?

24 MR. KEOUGH: Objection.

25 A. We had no contact with these guys.



1 Norbert Kock (1-19-16)

2 and that's a reference to this ARA contract.

3 So if I understand you correctly,  
4 the ARA contract does not have any relevance to  
5 bunker transactions at U.S. ports. So my  
6 question is, is this still correct, that in the  
7 normal course of business Hapag would remit  
8 payment to O.W. Germany for bunker transactions  
9 taking place at U.S. ports?

10 MR. KEOUGH: Objection to the form.

11 MR. FERNANDEZ: Objection.

12 A. Yes.

13 Q. So even though this contract in  
14 Exhibit 3 might not be relevant, payment would  
15 still be remitted from Hapag to O.W. Germany for  
16 bunker transactions for which O.W. Germany  
17 received the nomination?

18 MR. FERNANDEZ: Objection to the  
19 form.

20 MR. KEOUGH: Objection.

21 Q. In other words, Hapag would not pay  
22 a physical supplier directly?

23 A. No.

24 Q. Never. Okay. Did Hapag ever  
25 receive invoices directly from the physical

1 Norbert Kock (1-19-16)

2 suppliers for bunker nominations awarded to O.W.  
3 Germany?

4 A. There is a chance that this has  
5 been done in the course of bankruptcy when we  
6 had to cover on a very short notice bunker  
7 deliveries in the Port of Antwerp and Rotterdam.

8 Q. Prior to the bankruptcy did that  
9 ever occur?

10 A. No, not prior.

11 Q. Let's look at what has been marked  
12 as Exhibit 47, and this is Mr. Kock's  
13 Declaration from action 15-cv-6718, which was  
14 transferred from the U.S. District Court of the  
15 Western District of Washington to the Southern  
16 District of New York.

17 Sir, do you recognize this  
18 document?

19 A. Yes.

20 Q. This is a declaration that you  
21 signed on behalf of Hapag-Lloyd?

22 A. Yes.

23 Q. I take it then that you reviewed  
24 this document for the accuracy of its contents  
25 before signing?

1 Norbert Kock (1-19-16)

2 MR. KEOUGH: Objection to the form.

3 A. Probably, yes.

4 Q. But that's not what occurred here?

5 A. No.

6 Q. In footnote 2 of your declaration  
7 you say you completely disagree with U.S. Oil's  
8 characterization of O.W. Denmark as a bunker  
9 broker.

10 Again, I believe you've answered  
11 this from your perspective. From Hapag's  
12 perspective O.W. Germany was its contractual  
13 counterparty, correct?

14 A. O.W. Germany was our contractual  
15 counterparty.

16 Q. Hapag-Lloyd did not contract with  
17 O.W. Denmark in these transactions?

18 A. Never.

19 Q. And O.W. Germany was a trader in  
20 part because it agreed to A, sell the bunker  
21 fuel to Hapag-Lloyd; and B, agree to accept  
22 Hapag-Lloyd's terms and conditions; and C,  
23 assume the risk for that sale?

24 A. That's right.

25 MR. KEOUGH: Objection.

1 Norbert Kock (1-19-16)

2 parties which could be an in between.

3 Q. Is it fair so say then that Hapag  
4 did not care what happened downstream of O.W.  
5 Germany in terms of dealing with subcontractors,  
6 physical suppliers?

7 MR. KEOUGH: Objection.

8 A. That's not our business.

9 Q. If I understand correctly from what  
10 you said a few minutes ago, O.W. Germany's  
11 solicitation of business, as having the ability  
12 to serve as a one-stop shop, satisfied Hapag's  
13 upper management that they could begin doing  
14 business with O.W. Germany in 2007, is that  
15 correct?

16 MR. FERNANDEZ: Objection to the  
17 form. You can answer the question.

18 A. Yes, it seems so.

19 Q. So if I understand sort of as a  
20 synthesis of what you said already, Hapag-Lloyd  
21 never authorized or pointed O.W. Germany as an  
22 agent to order fuel on Hapag's behalf, is that  
23 correct?

24 MR. KEOUGH: Objection.

25 A. Never.

1 Norbert Kock (1-19-16)

2 Q. Did Hapag-Lloyd ever advise U.S.  
3 Oil or O'Rourke Marine that O.W. Germany was  
4 acting as an agent of Hapag-Lloyd?

5 A. No.

6 Q. Let's take a look at Exhibit H 1  
7 which is attached to your declaration toward the  
8 back. I would also like you to take a look at  
9 Exhibit 3, the third page of Exhibit 3 which is  
10 Bates stamped USOT 000103 through 107. I want  
11 you to compare these two.

12 It seems like we have two sets of  
13 terms and conditions used by Hapag-Lloyd. The  
14 version attached to Exhibit 3 appears to be  
15 3 pages long, and the version appearing at  
16 Exhibit H 1 of your declaration is 5 pages long.

17 Do you understand what the  
18 difference is between these two versions?

19 A. The first version here which was  
20 dated 2006, this is the version we were  
21 discussing earlier today, which has been always  
22 mentioned by O.W. as the terms and conditions of  
23 2007.

24 Q. And that's the version attached as  
25 Exhibit H 1 to your declaration?

1 Norbert Kock (1-19-16)

2 Germany?

3 A. Yeah, but it has been also  
4 confirmed by O.W. in their order.

5 Q. In their sales order confirmations.  
6 Even though Hapag's purchase order confirmations  
7 refer to the latest edition, it's the sales  
8 order confirmation and O.W. Germany's  
9 identification of the 2006 version that apply?

10 A. Yes.

11 MR. KEOUGH: Objection.

12 Q. Correct me if I'm wrong, but I  
13 believe you testified earlier that Hapag did not  
14 control O.W. Germany's selection of a physical  
15 supplier or a subcontractor for the purchase of  
16 a bunker fuel that had been supplied to Hapag?

17 MR. KEOUGH: Objection.

18 A. This is not our business.

19 Q. So Hapag did not instruct O.W.  
20 Germany to use certain physical suppliers at  
21 various ports?

22 A. No.

23 MR. KEOUGH: Objection.

24 MR. HEILIG: Let's take a 3-minute  
25 break and mark some exhibits.



1 Norbert Kock (1-19-16)

2 Q. I believe we discussed a bit about  
3 Norton Lilly and Oiltest, is that correct?

4 A. Yes.

5 Q. If I understand correctly, Norton  
6 Lilly was the local agent at the port?

7 A. That's right.

8 Q. And Oiltest was the surveyor  
9 appointed to essentially run quality control on  
10 the fuel specs?

11 A. Yes, and quality.

12 Q. What would be the purpose of the  
13 email at pages 154 to 155?

14 A. To inform the local agent, the  
15 vessel, the stowage planners, as well as the  
16 attending surveyor about this order we did.

17 Q. So it's really logistics and  
18 coordinating the physical supplier at the port?

19 A. It's only logistics.

20 Q. Neither Norton Lilly nor Oiltest  
21 plays any part in the negotiation or the  
22 formation of a contract for the purchase of fuel  
23 oil?

24 A. No.

25 Q. Do you know whether Hapag's

1 Norbert Kock (1-19-16)

2 claim was valid, there would be an adjustment in  
3 price to O.W. Germany's invoice to Hapag-Lloyd?

4 A. That's right.

5 Q. Irrespective of whether or not  
6 there would be a corresponding reduction or  
7 adjustment in price of the physical supplier's  
8 invoice to O.W.?

9 A. We have no relation to the physical  
10 supplier. We are just dealing with O.W.  
11 Germany.

12 Q. This all stems from that issue in  
13 the '90s where you dealt with the broker who  
14 simply washed his hands with the situation, and  
15 left Hapag with the recourse?

16 A. Yes.

17 Q. Let's take a look at Exhibit 14. I  
18 believe this was an email from the vessel  
19 attaching the bunker delivery note that was sent  
20 directly to Hapag?

21 A. Yes.

22 Q. Would Hapag have also received a  
23 copy of the bunker delivery note from O.W.  
24 Germany at some point?

25 A. It could have been done at some

1 Norbert Kock (1-19-16)

2 A. I don't know.

3 MR. FERNANDEZ: Let me just note  
4 he's already indicated that as far as in the  
5 30(b)(6) he wouldn't be comfortable on the lien  
6 issue, so it's not his area of expertise for  
7 purposes of the 30(b)(6).

8 Q. Would you turn to paragraph 12.  
9 Would you look at paragraph 12, it's on page 4  
10 of 8. Do you see that?

11 A. Yes.

12 Q. In that paragraph you describe that  
13 the fuel department evaluated the request for  
14 bunkers for the VIENNA EXPRESS, right?

15 A. Yes.

16 Q. You say, "Based upon pricing,  
17 quality and energy content the fuel department  
18 ordered the fuel to be delivered to the VIENNA  
19 EXPRESS from O.W. Germany," correct?

20 A. Yes.

21 Q. You knew that for that order U.S.  
22 Oil Trading was delivering the fuel to the  
23 vessel in Tacoma, right?

24 MR. FERNANDEZ: Objection.

25 A. You need to know who was delivering

1 Norbert Kock (1-19-16)

2 or who was going to deliver.

3 Q. And in this case you knew it would  
4 be U.S. Oil, right?

5 A. It has to be coordinated, just for  
6 logistical reasons.

7 Q. Hapag-Lloyd has to do that  
8 coordination, right?

9 A. No. The local agent, Norton Lilly.

10 Q. For Hapag-Lloyd, right?

11 A. Yes.

12 Q. So you know that U.S. Oil is going  
13 to be the party that's supplying the oil for  
14 that order, correct?

15 A. Yes.

16 MR. FERNANDEZ: Objection.

17 MR. HEILIG: Objection.

18 Q. Now, in this paragraph 12 you did  
19 not attach any of the price comparisons that  
20 you've testified about here today, right?

21 A. Um-hum.

22 Q. Was there a reason that you didn't  
23 include that price comparison as an exhibit to  
24 paragraph 12?

25 A. No.

# **Exhibit 4**

**O.W. Bunker Germany GmbH  
WW Division**


Hapag-Lloyd AG  
Ballindamm 25  
D-20095 Hamburg  
Germany

Neumühlen 11  
D-22783 Hamburg  
Germany  
Phone: +49 40 3255900  
Fax: +49 40 330471  
Tax No. / Steuer Nr. 41/768/03458  
E-mail: trading@owbunker.de  
Internet: <http://www.owbunker.com>  
Managing director: Götz Lehsten  
HR B 100089  
ING Bank N.V.  
IBAN: NL26 INGB 0020 1180 31  
IBAN: NL10 INGB 0851 3696 81  
SWIFT: INGBNL2A

**Sales Order Confirmation**

Sales Order No. 119-20179

We are hereby pleased to acknowledge receipt of your order as follows:

Vessel SANTA ROBERTA (IMO: 9227326)  
Port TACOMA  
Delivery date 9. October 2014  
Seller O.W. Bunker Germany GmbH

Hamburg 1. October 2014

Your ref.

Account MASTER AND/OR OWNER AND/OR CHARTERERS  
AND/OR MV SANTA ROBERTA  
AND/OR HAPAG-LLOYD AG

Quantity	Unit	Product / Quality	Curr	Price	Unit	Supplier
2.700,00	MT	Fueloil 700 CST 3,5%	USD	554,00	MT	US OIL
1,00	LPS	Booming fee	USD	0,00	LPS	US OIL

Agent NORTON LILLY

Payment WITHIN 30 DAYS FROM DATE OF DELIVERY UPON PRESENTATION OF INVOICE  
(ORIGINAL/TELEX/FAX). COPY OF DELIVERY RECEIPT WILL BE FORWARDED WHEN WE HAVE  
RECEIVED SAME.

Remarks all per ISO8217 2005(E)  
HALO GTC2007 shall apply.

We thank you for this nomination.

Kind Regards

Karl Heinz Selmer

Direct +49 4032 5590 12  
Mobile +49 151 276 276 80  
Yahoo ID khse\_owbunker  
E-Mail khse@owbunker.de  
Office E-Mail trading@owbunker.de



**O.W. Bunker Germany GmbH  
WW Division**



**TERMS AND CONDITIONS.**

**SAMPLES:**

Measuring and sampling to be done at barge/tanktruck/shoreside manifold, and receiving Vessels crew is requested to witness and verify the measuring of quantity and the drawing and sealing of samples. These verified quantities as noted in the BDR as well as these samples taken are the only ones deemed representative, and any dispute regarding quality to be settled by testing these retained samples by an independent laboratory at port/place of delivery, and result of this testing is deemed to be final and binding for both parties.

**TERMS:**

The sale and delivery of the marine fuels described above are subject to the OW Bunker Group's Terms and Conditions of sale(s) for Marine Bunkers. The acceptance of the marine bunkers by the vessel named above shall be deemed to constitute acceptance of the said general terms applicable to you as 'Buyer' and to O.W. Bunker Germany GmbH as 'Seller'.

The fixed terms and conditions are well known to you and remain in your possession. If this is not the case, the terms can be found under the web address:

[http://owbunker.com/wp-content/uploads/2013/12/OWB\\_GTC\\_ValidFrom01092013.pdf](http://owbunker.com/wp-content/uploads/2013/12/OWB_GTC_ValidFrom01092013.pdf)

**GUIDELINES FOR RECEIVING BUNKERS:**

We strongly urge you to forward the information regarding: General Instructions and Guidelines for Bunkering, for Receiving Vessels, on page 3, soonest possible to your Chief Engineer onboard. Following the suggested Guidelines should minimize risk of quantity disputes. Please bear in mind that barge figures are the sole valid quantity determination, wherefore Chief Engineer's attendance onboard the barge is extremely important.

**OTHERWISE:**

Any errors or omissions in above Confirmation should be reported immediately.

PLEASE INFORM US BY RETURN IF ABOVE NOMINATION DETAILS ARE NOT IN ACCORDANCE WITH YOUR UNDERSTANDING.

**O.W. Bunker Germany GmbH**  
**WW Division**



**GENERAL INSTRUCTIONS AND GUIDELINES FOR BUNKERING, FOR RECEIVING VESSELS**

**BEFORE BUNKERING:**

Please make sure to check all information given by the supplier on Bunker Requisition Form or such similar form as the supplier presents via the barge. If you notice changes in quantity or quality please urgently contact the relevant person in charge in your own operations to have same verified.

Make sure to witness and verify initial measurements and ullaging onboard the barge before, ALL tanks to be checked and measured including actual temperature of cargo – also including those tanks said not to be included in the particular supply (idle tanks). Compare measurements and verify the quantities as per barge ullage tables. When in full agreement please sign the ullage/sounding report for Before Supply figures. If any disagreements with the measurements, temperature and thereby figures please advise this on the Sounding form or, if not allowed, on separate Letter of Protest (make sure to obtain signature and stamp from barge Master for receipt).

If surveyor attends please ensure the surveyor also participates in measuring all barge tanks before supply and verify the figures.

**DURING BUNKERING:**

Always place a watchman to witness safe operation including also proper and correct sampling. The watchman must ensure that sampling is done properly, as continuous drip sampling throughout the delivery, and that clean devices are used for sampling. Also the watchman must witness proper and correct division into minimum 4 (four) clean and new identical sample bottles, including proper labelling and sealing of ALL samples. Make sure original sample (cubittainer) is shaken vigorously for 3 minutes before splitting into the 4 sample bottles and that bottles are filled in several passes. All seal numbers to be inserted into the Bunker Delivery Receipt (BDR). The MARPOL sample must be one of these samples drawn under witnessing.

The watchman must pay special attention to the bunker hose, and any un-agreed attempts to transfer air via same should cause immediate stoppage unless the use of air is caused by stripping of barge tanks, which stripping to be agreed in advance by both parties. If air is blown on continued basis, and stoppage on the supply not possible for any reason, the incident to be stated on a Letter of Protest, which should also contain the time (hours from/to) that airblow was notified.

It is known in some areas that the so-called Cappuccino Effect may be used or attempted to be used during supply. Pay special attention hereto and take all necessary precautions to observe, which includes:

- During tank measurements before it should be notified whether there are signs of air on the measuring tape used for ullaging.
- Look carefully for any signs of bubbles or similar on the surface of the fuel when it is still onboard the barge.
- Agree with the barge when and if they are going to make stripping of their tanks.
- Check and note the draft fore, mid and aft on the barge before and after supply to compare.
- If any signs at all of cappuccino or similar (except eventual stripping, agreed in advance), please stop the supply immediately and compare supply quantities made so far.
- Contact vessel operator in charge and request notification to the Seller and Supplier immediately.
- If surveyor attending please ensure that the surveyor signs a Letter of Protest also.
- After stopping the bunker supply please wait minimum 1 hour to await bubbles to disappear and re-measure the barge jointly with barge Master.

**AFTER COMPLETION:**

Repeat the measurement, sounding and ullaging of the barge, including verification of temperature of each tank. Make sure also on completion to verify contents of ALL tanks, including those being idle.

Report (ullage) must be signed by all parties involved, including eventual nominated surveyor. If disagreements with the figures (mm, temperature) a Letter of Protest to be issued, but also such specific disagreements to be stated on the Ullage report covering "after" supply.

**QUANTITY COMPLAINTS:**

Receiving Vessel to inform discrepancies in writing latest upon completion of taking the bunkers.

# **Exhibit 5**

**O.W. Bunker Germany GmbH  
WW Division**

Hapag-Lloyd AG  
Ballindamm 25  
D-20095 Hamburg  
Germany



Neumühlen 11  
D-22763 Hamburg  
Germany  
Phone: +49 40 3255900  
Fax: +49 40 330471  
Tax No. / Steuer Nr. 41/768/03458  
E-mail: trading@owbunker.de  
Internet: http://www.owbunker.com  
Managing director: Götz Lehsten  
HR B 100089  
ING Bank N.V.  
IBAN: NL26 INGB 0020 1180 31  
IBAN: NL10 INGB 0651 3696 81  
SWIFT: INGBNL2A

**Sales Order Confirmation**

Sales Order No. 119-28241

We are hereby pleased to acknowledge receipt of your order as follows:

Vessel SEASPAN HAMBURG (IMO: 9224300)

Port TACOMA

Delivery date 16. October 2014

Seller O.W. Bunker Germany GmbH

Your ref.

Account MASTER AND/OR OWNER AND/OR CHARTERERS  
AND/OR MV SEASPAN HAMBURG  
AND/OR HAPAG-LLOYD AG

Hamburg 10. October 2014

Quantity	Unit	Product / Quality	Curr	Price	Unit	Supplier
2,900,00	MT	Fueloil 700 CST 3,5%	USD	523,00	MT	US OIL Delivery : Barge
1,00	LPS	Booming fee	USD	0,00	LPS	US OIL

Agent NORTON LILLY

Payment WITHIN 30 DAYS FROM DATE OF DELIVERY UPON PRESENTATION OF INVOICE  
(ORIGINAL/TELEX/FAX). COPY OF DELIVERY RECEIPT WILL BE FORWARDED WHEN WE HAVE  
RECEIVED SAME.

Remarks all per ISO8217 2005(E)  
HALO GTC 2007 shall apply.

We thank you for this nomination.

Kind Regards

Karl Heinz Selmer

Direct +49 4032 5590 12

Mobile +49 151 276 276 80

Yahoo ID khse\_owbunker

E-Mail khse@owbunker.de

Office E-Mail trading@owbunker.de

O.W. Bunker Germany GmbH  
WW Division



TERMS AND CONDITIONS.

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[http://owbunker.com/wp-content/uploads/2013/12/OWB\\_GTC\\_ValldFrom01092013.pdf](http://owbunker.com/wp-content/uploads/2013/12/OWB_GTC_ValldFrom01092013.pdf)

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## O.W. Bunker Germany GmbH WW Division



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